

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1132 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : YES

PANKAJ NARAIN SHAH

Versus

SHANTILAL HIMATLAL SHAH

Appearance:

MR JITENDRA M PATEL for Petitioners
MR ASHWIN N DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/06/2000

CAV JUDGEMENT

The petitioners above named have filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 challenging the judgement and order recorded by the Learned Assistant Judge at Vadodara on 5.3.1999 in Civil Misc. Appeal No. 409 of 1998 whereby

the Learned Assistant Judge allowed the said appeal and set aside the order passed below application Exh.7 on 28.10.97 in Special Civil Suit No. 326/97 by the Learned 3rd Joint Civil Judge (SD) Vadodara.

2. It appears that the Learned Civil Judge by order dated 20.10.1997 granted interim injunction in favour of the original plaintiff and against the defendants. The Learned Assistant Judge allowed the appeal and set aside the aforesaid order of injunction and dismissed the said application of the plaintiff. Therefore the original plaintiff have brought this revision before this Court.

3. A primary objection has arisen as to whether the Learned Assistant Judge had jurisdiction to entertain the aforesaid Civil Misc. Appeal. The matter has been argued on behalf of the parties by their respective advocates. I have gone through the papers and I have also gone through the provisions contained in the Bombay Civil Courts Act.

4. Learned Advocate for the petitioners argued at length that the Learned Assistant Judge while hearing the Misc. Appeal against the judgment and order of the Civil Court had no jurisdiction to entertain the said appeal. On the other hand, the Learned Advocate for the respondents has argued that he did possess the jurisdiction to entertain the said appeal.

5. Now incidentally the aforesaid point was raised before the Learned Assistant Judge also and the Learned Assistant Judge relied upon a decision of this Court in order to hold that he had jurisdiction to entertain the said appeal.

6. The said decision can be read from Filoma Pathubhai Patel and Others Vs. Ambalal D Bhagat and Others reported in 1987(1) G.L.H. (U.J.) 21. Hon'ble Mr. Justice S.B.Majmudar, J (as his Lordship then was) considered in FA No. 557/84, the provisions contained in Section 6(iv)(j) of the Bombay Court Fees Act, 1959 and also considered the provisions contained in Section 8 of the Suit Valuation Act, 1887. The provisions contained in Section 8,24 and 26 from the Bombay Civil Courts Act, 1869 were also considered. It appears that the aforesaid suit was filed on a Court Fee stamp of Rs.30/- and was valued for the purpose of court fees under Section 6(iv)(j) of the Bombay Court Fees Act accordingly. Then so far as the valuation for jurisdiction is concerned, this Court found that the valuation for the purpose of court fees would automatically govern the valuation for

the purpose of jurisdiction, therefore it has been observed that the suit will have to be treated by deeming fiction of Section 8 of the Suit Valuation Act to be valued for the purpose of jurisdiction also on that basis. Therefore, it was held that the appeal would lie to the District Court. Thereby holding that the valuation for the purposes of court fees and jurisdiction was limited to Rs.300/-.

7. If we can turn to the provisions containing Section 26 of the Bombay Civil Courts Act, we find that there it has been made clear that when the valuation of the suit exceeds Rs.50000/- then the appeal from the decision would lie directly to the High Court. In other words if the valuation is below Rs.50000/-, the Appellate Authority is the District Court. It may be an appeal under Order 41 or it may be a Misc. Appeal under Order 43 of the Civil Procedure Code. In both the events if the valuation of the suit for the purpose of jurisdiction is below Rs.50000/-, the appeals would lie to the District Court and if it exceeds that value then the appeal would lie directly to the High Court.

8. In the case before us, it is an admitted position that the valuation of the suit for the purpose of Court Fees and jurisdiction, both, is exceeding Rs.50000/-. In that view of the matter, the aforesaid decision of 1987(1) GLH (U.J) 21 (Supra) will not come into play in view of facts of the case before us. There, the valuation for the purpose of court fees and jurisdiction was Rs.300/-. In the case before us the valuation of the suit for the purpose of court fees and jurisdiction is exceeding Rs.50,000/-.

9. Therefore even if we ignore the fact that the suit has been registered as Special Civil Suit the position remains that in the case before us the valuation of the suit for the purposes of court fees and jurisdiction exceeds the amount of Rs.50000/- and therefore the appeal would directly lie before this Court under Section 26 of the Bombay Civil Courts Act.

10. A reference was made to Kota Match Factory Vs. State of Rajasthan reported in AIR 1997 Rajasthan 118. There ordinarily the plea was not taken before the trial Court and hence was allowed to be taken in appeal for the first time.

11. In the present case, the issue touches the jurisdiction of the District Court and the point was specifically raised before the District Court.

Therefore, the aforesaid decision will not apply to the facts of the case before us.

12. I am therefore of a clear decision that the suit in question has been valued for the purposes of court fees and jurisdiction at a amount exceeding Rs.50000/and therefore under Section 26 of the Bombay Civil Court Act, the appeal would lie to the High Court and not to the District Court. The District court had therefore no jurisdiction to entertain the appeal. In that view of the matter, the Learned Assistant Judge has committed jurisdictional error in holding that he had jurisdiction to entertain the said Civil Misc. Appeal before him.

13. In aforesaid view of the matter, it is very clear that the Learned Assistant Judge had no jurisdiction to entertain the Civil Misc. Appeal. The appeal entertained by him is without jurisdiction and when the Court functions and passes an order without having any jurisdiction to entertain the said matter, it would be the duty of this Court to interfere with the said decision of the said Court while exercising revisional powers under Section 115 of the Code of Civil Procedure, 1908. Under the aforesaid circumstances, I am of a clear decision that the Learned Assistant Judge has acted without jurisdiction in entertaining, hearing and allowing the said appeal. The said judgement and order of the Learned Assistant Judge therefore require interference by this Court and therefore they are required to be quashed and set aside.

14. Under the circumstances, this Civil Revision Application is allowed. The judgement and order of the Learned Assistant Judge are set aside. Considering the facts and circumstances of the case there shall be no orders as to costs. Rule made absolute.

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